

REMARKS

Further consideration of this application is respectfully requested. Claims 19-21, 24-27 and 36-38 were last presented for examination. Claims 20, 21 and 24 have been cancelled without prejudice. Claims 19, 26, 27, 37 and 38 are presented for further examination.

The interview with Examiner Jason Dunham on August 2, 2007, as well as the telephone interview on August 7, 2007, with Applicant's attorney, William W. Cochran, was greatly appreciated. Applicant discussed the Giovannoli and Walker references that were cited by the Examiner. It was agreed by Applicant's attorney and Mr. Dunham that both Giovannoli and Walker were similar in that they both relate to reverse auction systems in which a buyer quotes a price or requests a quote from numerous sellers. In Walker, the seller decides whether to accept a price bid by a buyer for goods or services. In Giovannoli, the seller actually bids a price which the buyer can decide whether to accept. The Walker system is related to the "Priceline" system in which the buyer "names its own price." As was further discussed, the electronic blind supply open commerce business system, as set forth in claims of the present application, is not a reverse auction system and operates in a completely different manner, as explained in more detail below. Amendments have been made to the claims that further distinguish the claims of the above identified application from the art cited by the Examiner in order to obtain allowance of these claims.

Claims 19-21, 24, 26, 27 and 36-38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Giovannoli in view of Walker.

As disclosed above, Giovannoli discloses a computerized quotation system in which buyers request quotes from sellers for standard products. The Giovannoli system processes requests for quotations for goods and/or services by broadcasting such requests to network members of a computerized system over the Internet. The advantage recited by Giovannoli, which is unlike the present invention, is that Giovannoli does not use a central database of goods, prices, etc. This is a direct teaching away from Applicant's claimed invention that uses a central database. Instead, buyers formulate requests for quotation and transmit these requests to the computerized network. The computerized

network then broadcasts the requests for quotation (of specified standard products) to prospective sellers that are selected using filtering conditions. The sellers' responses are communicated back to the prospective buyer over the Internet or other communications networks. The Giovannoli system is a computer based communications network of network members for linking buyers and suppliers, in which the system stores the identification of the network members, i.e., both the suppliers (vendors) and the buyers, and discloses the identity of the sellers to the buyers. The Giovannoli system allows buyers to purchase items over the Internet by accessing multiple vendors (sellers). The buyer provides a request for a quote. Sellers then bid on the quote in a reverse auction.

The independent claims 19 and 38 specifically distinguish from the Giovannoli reference by clearly claiming that the suppliers specify a set price (not an auction) for the goods, post the goods for sale on the computer business system (no posting by seller in Giovannoli) and allow the purchasers to purchase the goods at a fixed sales price without bidding in an auction (sellers bid in a reverse auction in Giovannoli). The posting of the goods for sale is what Giovannoli avoids, which is stated as an advantage in Giovannoli. See paragraph 8 of Giovannoli. Again, this is a direct teaching away from the "posting" claim element of claims 19 and 38.

Walker discloses a system similar to Giovannoli. Walker is also a reverse auction system in which the buyer dictates the terms by submitting conditional purchase orders (CPOs). The CPOs are provided to numerous sellers of products and services (not a posting of products available from sellers), and the sellers can accept the CPO (not buyers purchasing at a fixed price) and be bound by the terms and conditions of the CPO including the price.

The claimed invention, as set forth in independent claims 19 and 38, differs from Walker, in that they do not claim buyer driven systems, but supplier driven systems. For example, the system receives product information from suppliers, calculates a fixed sales price and automatically generates entries in the system. This system then posts a listing of the goods that are available from the suppliers, and makes these listings available to the purchasers, so that the purchasers can purchase the goods at a fixed sales price. These limitations are not shown in Giovannoli or Walker. The method set forth in claims 19 and 38 is the opposite of what is being done by Walker.

Again, in Walker, the buyer sends out a CPO, which can be accepted by a seller. Product information is not uploaded by suppliers to a blind supply open commerce computer business system, entries are not automatically generated in the computer business system, there is no posting of a listing of the goods from the supplier, and the listing of goods is not made available to purchasers to purchase the goods at a fixed sales price.

Even assuming arguendo that Giovannoli and Walker et al. could be combined, this combination still does not show the invention as set forth in claims 19 and 38. For example, there is no teaching of maintaining the anonymity of the seller in Giovannoli. Giovannoli does just the opposite. Giovannoli teaches disclosure of the seller's identify. Although Walker states in paragraph 40 that "seller identities are maintained anonymous within the CPO system 100 ...," Walker further states that this is true "until a CPO is accepted." In other words, the anonymity of the seller is only maintained until the CPO is accepted.

Claim 19 specifically states "posting a listing of said goods from said entries on said electronic blind supply open commerce computer business system without revealing said suppliers so that said suppliers remain anonymous to purchasers, both while said goods are posted for sale on said electronic blind supply open commerce computer business system and after said goods are sold." This limitation is clearly not shown or disclosed, in any manner by either Giovannoli or Walker. In fact, Walker constitutes a teaching away from the present invention by stating that seller anonymity is maintained "until a CPO is accepted." Giovannoli also teaches that the sellers are disclosed to the buyers, which is a teaching away from the claimed invention.

Such was the case in *United States v. Adams*, 383 U.S. 39, 148 USPQ 479 (1966), decided with *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966), wherein the Supreme Court found that the teachings of the prior art deterred investigation into the inventive combination found by *Adams*. This teaching away from the invention by the prior art was found to be clear evidence of non-obviousness of the Adams invention. Both references are also a direct teaching away from Applicant's invention, since both references are directed to a reverse auction. Since the teachings of the references are

limited to reverse auction systems, the teachings of the references would deter investigation into systems that do not use reverse auctions.

Applicant's independent claims 19 and 38 further distinguish from Giovannoli and Walker by further including limitations relating to a payment system in which the fixed price payment by the buyer is accepted and that payment, less a margin, is forwarded to the supplier, so that the anonymity of the supplier can be maintained. This relates to payments made in full or over time on terms. As indicated in the specification, page 15, lines 29-31, "[T]he Product may also be purchased from an account or other form or payment that is associated or controlled by the user of the SCS system." Also, the specification states on page 16, lines 8-10, "[I]n light of this payment discussion, the present invention is not limited to the methods of transferring payments between the Buyer, SCS system and Supplier." Hence, the specification clearly indicates that payment can be made on terms and is not limited to full payment, especially electronic payment, immediately upon purchase. The point is that neither Giovanolli nor Walker accept payment from the buyer and pay the seller a fixed price, less a margin, while maintaining the anonymity of the seller.

The test for obviousness under 35 U.S.C. § 103 is whether the claimed invention would have been obvious to those skilled in the art in light of the knowledge made available by the references. *In re Donovan*, 184 USPQ 414, 420 n.3 (CCPA 1975). It requires consideration of the entirety of the disclosure of the references. *In re Rinehart*, 189 USPQ 143, 146 (CCPA 1976). All limitations of Applicant's claims must be considered. *In re Boe*, 184 USPQ 38, 40 (CCPA 1974). In making a determination as to obviousness, the references must be read without the benefit of Applicant's teachings. *In re Meng*, 181 USPQ 94, 97 (CCPA 1974).

As set forth above, all of the limitations of Applicant's claims must be considered. Applicant's claims specifically distinguish from the reverse auction systems of the references, as indicated above, by specifically excluding auction systems in the claims, and specifically stating that the seller's anonymity is maintained while the goods are posted for sale and after the goods are sold. This limitation of Applicant's claims cannot be ignored, and clearly distinguishes over both Giovannoli and Walker.

In addition, Applicant has amended claim 38 to recite that the entries generated on the on-line blind supply computerized selling system include "a fill grade rating of said

supplier.” A fill grade rating, as disclosed on page 3, lines 19 and 20, is a rating that indicates how a supplier temporally fills orders. This has not been shown or disclosed, in any manner, in any of the art of record.

In addition to the remarks stated above, Applicant specifically rescinds all previous arguments made in the prosecution history of this application with respect to all references previously cited by the various examiners that have worked on this application. In that regard, Applicant specifically rescinds all arguments made with respect to Odom, et al., Case, et al. and Doyle, et al., made in Amendment A, Odom, et al., Case, et al. and Doyle, et al., in Amendment B, the Sears reference, Doyle, et al., in Amendment C, Fairmarket and Doyle, et al., in Amendment D, Fairmarket and Shkedy, in Amendment E, and Fairmarket in Amendment F.

For these reasons, claims 19 and 38 are considered to be allowable over the art of record. The claims dependent on these independent claims are considered to be allowable for the same reasons as set forth above. Allowance of this application is therefore earnestly solicited.

Dated this 13th day of September, 2007.

Respectfully submitted,

COCHRAN FREUND & YOUNG LLC

By: _____



William W. Cochran
Registration No. 26,652
2026 Caribou Drive, Suite 201
Fort Collins, CO 80525
Phone: (970) 492-1100
Fax: (970) 492-1101
Customer No.: 27479